IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8022 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHTA PRAVINCHANDRA MANILAL - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,MRS MH RAWAL for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/08/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Munshaw waives service of notice of rule on behalf of the respondent. At the joint request of the learned

advocates appearing for the parties, the petition is taken up for final hearing today.

2. The petitioner claims pensionary benefits from the respondent.

3. Short facts leading to the present petition are that the petitioner initially was discharging his duty as a daily-wager employee with the respondent Corporation. His services were regularised from 1.11.86, from which date he started discharging his duties as regular conductor. With the nature of employment of the petitioner there is not much dispute and in any case, this Court is not directly concerned with the same in this petition.

4. The petitioner not enjoying good health, tendered his resignation by letter dated 18.5.2005. In the said letter, he stated that he has multiple health problems, such as stoppage of blood circulation in both legs which causes swelling and severe pain due to which he cannot stand for long. He, therefore, stated that on account of his health condition he tenders his resignation which may be accepted with effect

from 19.6.2005. Along with the said letter, he also enclosed the necessary medical reports.

5. Before this offer of resignation can be accepted and at any rate before the same became effective, the petitioner wrote a letter dated 3rd June 2005 to the respondent. In the said letter, he stated that on account of unfitness, he is unable to discharge his duties any longer and he may be relieved on medical grounds and he be paid pension. There is no dispute about the fact that this letter was duly received by the respondent.

6. Eventually, since the petitioner was not paid his pension, he filed Special Civil Application No.20804 of 2005. The said petition came to be disposed by an order dated 14.10.05. The learned Judge in the said order provided that the authorities should take decision regarding payment of pension to the petitioner. Since the ultimate conclusion of the respondent was adverse to the petitioner, he has filed this petition.

7. The respondent has filed affidavit and resisted

the petition. Primarily, it is contended that the petitioner had not put in 20 years of service so as to seek voluntary retirement. It is also contended that the petitioner had resigned from service and therefore would not be entitled to receive pension. It is stated that other benefits such as gratuity and provident fund have already been paid to the petitioner.

8. Having heard the learned advocates appearing for the parties, I find that though initially the petitioner had tendered his resignation by his letter dated 18.5.2005, there was no official acceptance of such a letter at least till 3.6.2005 when he wrote the subsequent letter to respondent and in any case, the event of relieving the petitioner from service pursuant to his resignation had not arrived. The petitioner had clearly indicted that he wished to be relieved with effect from 19.6.2005. Before that date, unless there was some extra-ordinary reason, the petitioner had the right to request for recalling his offer of

resignation. Viewed from this angle, it can be seen that long before the date of eventual termination of service through resignation and before even the offer of resignation was accepted by the respondent, the petitioner indicated through his fresh communication dated 3.6.2005 that he may be permitted to retire on invalid grounds. The respondent, therefore, ought to have adverted to this request of the petitioner and committed an error in relieving the petitioner on the basis of his earlier resignation.

9. It may be noted that if the petitioner was found medically fit, the respondent could have refused his request for retirement on invalid pension. However, no such exercise was undertaken by the respondent to ascertain whether the claim of the petitioner that he is medically unfit to discharge his duty was accurate or not.

10. Considering all these aspects of the mater, I find it appropriate that the respondents should be required to examine the medical condition of the petitioner. If it is found that his medical

condition would not permit him to discharge his duties, his request for relieving on medical grounds should be considered. If on the other hand, the respondent finds that the petitioner is fit to discharge his duties, his request for relieving on medical ground can be refused. It may be noted that no rule has been pointed out to suggest that for receiving invalid pension on medical ground, any minimum years of service is required. In the facts of the case, therefore, this petition is disposed of by giving following directions:-

(1) Respondent shall send the petitioner to the competent medical authority for verification of his health condition. The petitioner shall present himself before the medical authority as may be directed.

(2) Upon receipt of the report from the Medial Authority, the respondent shall consider the case of the petitioners for relieving him on medical grounds.

(3) If the petitioner is found medically unfit to discharge his duties, the respondent shall

proceed to accept his request for release on medical grounds as indicated in his letter dated 3.6.2005 and shall recalculate his benefits payable to him on that basis. The petitioner shall not claim any benefit for the period subsequent to 19th June 2005.

(4) If it is found that the petitioner is not medically unfit for discharging his duty, there shall be no change in acceptance of the resignation by the respondent.

11. The aforesaid exercise shall be completed expeditiously and preferably within a period of two months from today. The petition is accordingly allowed to the above extent. Rule is made absolute to the above limited extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)